

**STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
OFFICE OF CONSERVATION AND COASTAL LANDS  
Honolulu, Hawaii**

November 17, 2006

Board of Land and  
Natural Resources  
State of Hawaii  
Honolulu, Hawaii

**REGARDING:** Conservation District Enforcement File MA 07-15  
Regarding Unauthorized Construction of a 100,000 Gallon  
Potable Water Tank; Unauthorized Construction of a  
Road/Utility Easement; Unauthorized Drainage Easement;  
Unauthorized Placement of Utility Poles; Multiple  
Unauthorized Tree Removal; Unauthorized Grubbing,  
Grading and Land Clearing; Unauthorized Accessory Fence  
Structure

**BY:** Developer CGM, LLC. and  
Wahi Ho'omalua Limited Partnership

**LANDOWNERSHIP:** Wahi Ho'omalua Limited Partnership

**TMK:** (2) 3-3-002:001

**AREA OF USE:**  $\approx$  1.173 acres

**AREA OF PARCEL:**  $\approx$  834.016 acres

**LOCATION:** Wailuku, Maui

**SUBZONE:** Resource

**DESCRIPTION OF AREA:**

The subject site is approximately ( $\approx$ ) 1.173 acre area of TMK (2) 3-3-002:001 located in the Wailuku District, Central Maui on the northeast windward slopes of the West Maui mountains just north of Iao Valley within the Resource subzone. The elevation of the project site area ranges from  $\approx$  720' to 820' above mean sea level. Iao Stream is approximately .255 miles to the south and the Maniania irrigation ditch runs from south to north just east of the project site area. In this particular area, the Maniania Ditch defines the State Land Use Boundary between the Conservation District and the Agricultural District (**Exhibit 1, 2, 3, & 4**).

According to information provided by CGM, LLC's Counsel, the land type of the subject area is classified by the NRCS as primarily rRR or Rough Broken Land utilized for watershed and wildlife habitat. In places it is also used for pasture and woodland. The Soil Survey Report places these soils in capability subclass VII that have very severe limitations that make them generally unsuited to cultivation and limit their use largely to pasture or range, woodland, or wildlife.

The subject area is noted as the proposed Lot A-1-A that is a portion of Lot A-1 of the Iao Valley Large Lot Subdivision. The project area is adjacent to the Wailuku Country Estates, an agricultural subdivision developed on lands formerly cultivated by C. Brewer, Ltd. Though part of the former C. Brewer plantation holdings, this area underwent reforestation in the 1930's with plantings of introduced tree species such as Formosan Koa, Albizzia, and Ironwood. According to information submitted, no archaeological or cultural features were located or found within the project site area. The State Historic Preservation Division concurs with this finding (**Exhibit 5**).

#### **ALLEGED UNAUTHORIZED LAND USES:**

On September 20, 2006, a Conservation District Use Application (CDUA) was filed on behalf of CGM, LLC. for an After the Fact permit for a 100,000 Gallon potable water storage tank (reservoir), an easement for roadway/utility purposes and an easement for drainage over-flow. In addition, CGM, LLC, also proposed a subdivision for 0.551-acre parcel for the reservoir site together with the two easements as the subject tank site and easement has been under the control and operation of the Maui County Department of Water Supply since the completion of the adjacent subdivision in 2002/2003. Unauthorized land uses within the Conservation District were noted in the application and an enforcement case was initiated (**Exhibit 6**).

Unauthorized land uses within the Conservation District include:

- A 100,000-gallon high-level potable water storage tank to serve 49 agricultural lots within the adjacent Wailuku Country Estate (formerly the Puuohala Mauka Ag Subdivision). The stainless steel tank sits at a finished grade at the 801' elevation and it's dimensions are 31' in diameter and 20' high (**Exhibit 7**).
- An  $\approx 19,612$  ft<sup>2</sup> easement (Easement 1) for access and utility purposes in favor of Lot A-1-A, the County of Maui and Maui Electric Company, Ltd. The 12' wide concrete access road runs west from Kamaile Street Between Lots 138 & 139 of the Wailuku Country Estates entering the Conservation District after passing over the Maniania Irrigation Ditch that runs along the western edge of the subdivision and is approximately 633 feet to Lot A-1-A. Access to the project site is controlled by Maui County Department of Water Supply through a locked gate at Kamaile Street (**Exhibit 8**).
- A 1,178 ft<sup>2</sup> easement for drainage over-flow (Easement 3) in favor of the County of Maui (**Exhibit 9**).

- The application states, "*Considerable clearing of vegetation and some physical impact to the land during construction of the water storage facilities and the roadway in the late 2003.*" Plans show prior and proposed grade of areas cut and filled (**Exhibit 9, 10 & 11**).
- Placement of utility poles for electrical services. Electricity is a required utility for the operation of the water system (**Exhibit 12**).
- Photographic evidence documents the road and tank site intrusion through tree growth. The evidence suggests the removal of several large trees (**Exhibit 13 & 14**).
- The tank site is entirely enclosed by a 6' high chain link fence (**Exhibit 15**).

**REFERRAL OF ALLEGED VIOLATIONS TO THE LAND BOARD RATHER THAN THE HEARING OFFICER/ADMINISTRATIVE PENALTY SYSTEM (HOAPS):**

A decision was made to refer the subject alleged violations to the Board of Land and Natural Resources rather than HOAPS because the seven violations are alleged in a single report. HOAPS draws a distinction between Level I and Level II violations. Level I violations are of the more serious category and must be referred to the Board of Land and Natural Resources, while Level II violations may be processed through HOAPS. HOAPS includes criteria for determining Level I and Level II violations. In this case, the subject alleged violations rise to Level I because of the number of violations.

**RESOLUTION OF UNAUTHORIZED LAND USES:**

Conservation District

Chapter 13-5, Hawaii Administrative Rules (HAR) and Chapter 183C, Hawaii Revised Statutes (HRS), regulate land uses in the Conservation District by identifying a list of uses that may be allowed by Conservation District Use Permit. The chapters also provide for penalties, collection of administrative costs and damages to state land for uses that are not allowed or for which no permit has been obtained. Chapter 13-5 HAR defines "land use" in part as: the placement or erection of any solid material on land or the grading, removing or dredging of any material or natural resource on land or the construction, reconstruction, demolition, or alteration of any structure, building, or facility on land.

The unauthorized construction of a 100,000 Gallon potable water tank; unauthorized construction of a road/utility easement; unauthorized drainage easement; unauthorized placement of utility poles; unauthorized multiple tree removal; unauthorized grubbing, grading and land clearing; and the unauthorized accessory fence are seven separate land uses that occurred in the Conservation District without approval, and therefore allegedly violate the above chapters. This report and staff recommended conditions seek to resolve

the seven subject Conservation District violations. Pursuant to Chapter 183C, HRS, the maximum fine for a conservation district violation is \$2,000.00 per violation, or \$2,000.00 per day.

**DISCUSSION:**

According to the submitted application, at the time that the improvements were constructed, it was believed that all of the off-site utilities for the adjacent Wailuku Country Estates were within the State Land Use Agricultural District. It was believed that the Forest Reserve boundary and the Conservation boundary were the same. However, in this case, the Conservation boundary extends below the Forest Reserve boundary and includes the subject improvements. The on-line Maui County Real Property Assessment Division states the Property class as AGRICULTURE and CONSERVATION for the subject parcel (**Exhibit 16 & 17**).

Staff notes, Wailuku Country Estate's developer, CGM, LLC completed the purchase of the subdivision site in August of 2002. By February 26, 2003, the County of Maui Land Use & Codes Administration Department of Public Works and Waste Management issued a Building Permit for the subject tank (**Exhibit 18**). By January 2004, the unauthorized construction of a 100,000 Gallon potable water tank; unauthorized construction of a road/utility easement; unauthorized drainage easement; unauthorized placement of utility poles; multiple unauthorized tree removal; unauthorized grubbing, grading and land clearing; and the unauthorized accessory fence was completed.

The landowner, Wahi Ho'omalu Limited Partnership, LLC allowed the siting of the improvements within the Conservation District portion of his land. CGM, the developer of the water system improvement apparently failed to review Hawaii State Land Use Law prior to initiation of construction. The County of Maui failed to properly review the application and approved land uses that were not within their jurisdiction.

Staff notes in late August 2004, the Project Contractor corresponded with the State Land Use Commission and requested review of the State Land Use District of the area. However, by then, the improvements were near completion.

Staff notes, although the subject area is reforestation of introduced flora, it provides avifauna habitat and a buffer to the Forest Reserve. Aerial photos of vegetation of the subject area clearly illustrate the delineation of agricultural mono crop vegetation versus mixed vegetation of large mature trees (**See Exhibit 8, 13 & 14**). The water storage tank and accessory land uses are an intrusion into the Conservation District. Maps of the Waiehu/Wailuku area illustrate the urban creep towards the Conservation District (**See Exhibit 2, 3 & 4, Exhibit 19**). State Land Use Law provides State Land Use Districts to direct and attempts to control growth while protecting important agricultural lands and conserving, protecting and preserving the natural resources of the Conservation District.

Staff believes that agents of CGM, LLC, as a Developer of various properties in Hawaii must familiarize themselves with Hawaii State Land Use law and acquire full knowledge

that approvals will be required from the State Department of Land & Natural Resources prior to initiation of any land use within the Conservation District. Staff believes that the landowner has the responsibility to insure that Conservation District Rules and Regulations are adhered to on his property that lies within the Conservation District. Staff believes that the County of Maui must improve their review of land use applications to insure proper jurisdiction and to assure proper approvals are obtained prior to construction. Staff is recommending the maximum penalty for each violation.

This submittal and notice of the Board's meeting will be sent to CGM, LLC.'s Counsel by certified mail.

**FINDINGS:**

1. That the Developer, CGM, LLC. did in fact, authorize, cause or allow seven separate unauthorized land uses on the subject parcel to occur; and
2. That the seven unauthorized land uses occurred within the State Land Use Conservation District, Resource subzone.

**AS SUCH, STAFF RECOMMENDS AS FOLLOWS:**

That, pursuant to Chapter 183C, Hawaii Revised Statutes (HRS), the Board find the Developer, CGM LLC. in violation of Chapter 183C HRS and Chapter 13-5, Hawaii Administrative Rules (HAR), and is subject to the following:

1. CGM, LLC is fined in seven instances for violating the provisions of Chapter 183C, Hawaii Revised Statutes (HRS), and Chapter 13-5, Hawaii Administrative Rules (HAR), for the unauthorized construction of a 100,000 Gallon potable water tank; unauthorized construction of a road/utility easement; unauthorized construction of a drainage easement; unauthorized placement of utility poles; multiple unauthorized tree removal; unauthorized grubbing, grading and land clearing; and the unauthorized construction of an accessory fence by failing to obtain the appropriate approvals within the Conservation District for \$14,000.00;
2. CGM, LLC is fined an additional \$1000.00 for administrative costs associated with the subject violations;
3. CGM, LLC shall pay all designated fines and administrative costs (total \$15,000.00) within (60) days of the date of the Board's action;
4. CGM, LLC shall either remove the improvements or apply for an After the Fact (ATF) Conservation District Use Application (CDUA) within 60 days of

the date of the Board's action for the subject unauthorized land uses to determine its final disposition;

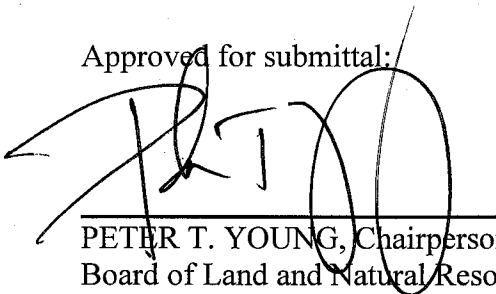
5. That in the event of failure of CGM, LLC to comply with any order herein, CGM, LLC shall be fined an additional \$2000 per day until the order is complied with;
6. That in the event of failure of CGM, LLC to comply with any order herein, the matter shall be turned over to the Attorney General for disposition, including all administrative costs.

Respectfully submitted,



K. Tiger Mills, Staff Planner  
Office of Conservation and Coastal Lands

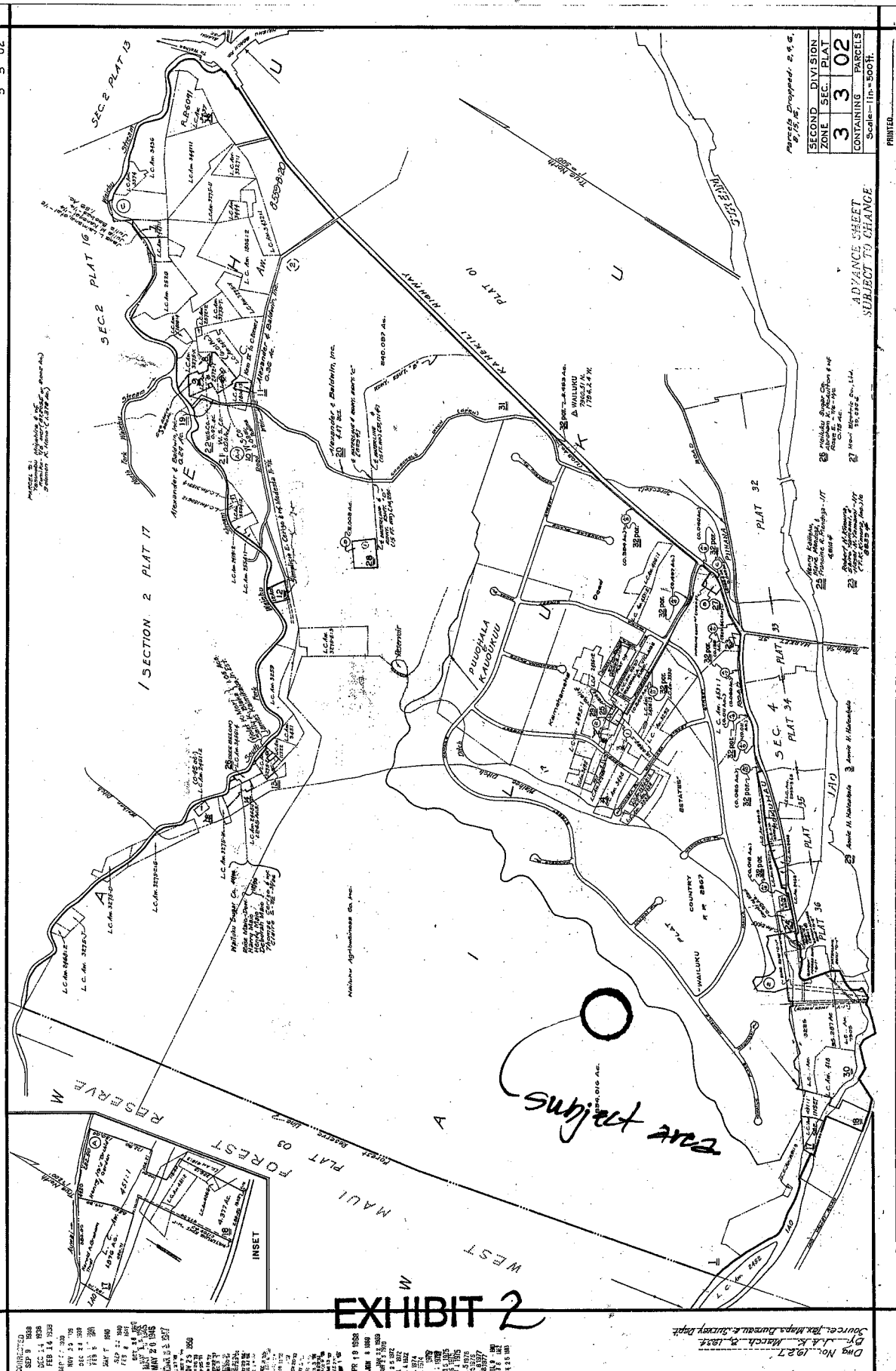
Approved for submittal:

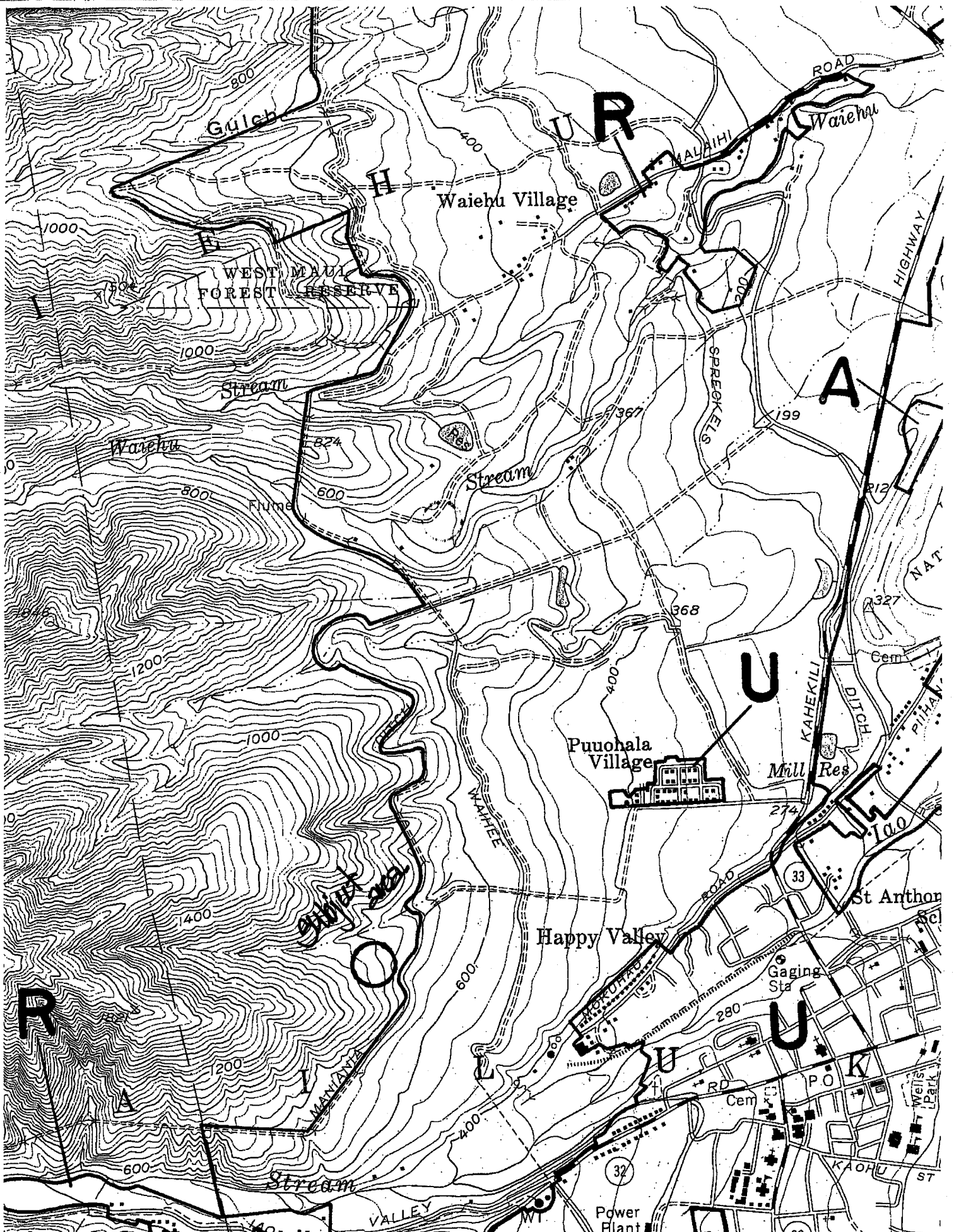


PETER T. YOUNG, Chairperson  
Board of Land and Natural Resources

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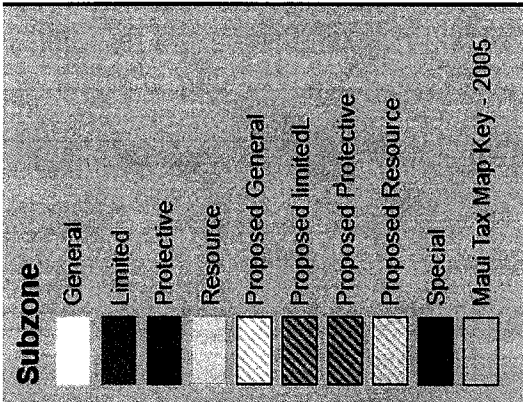
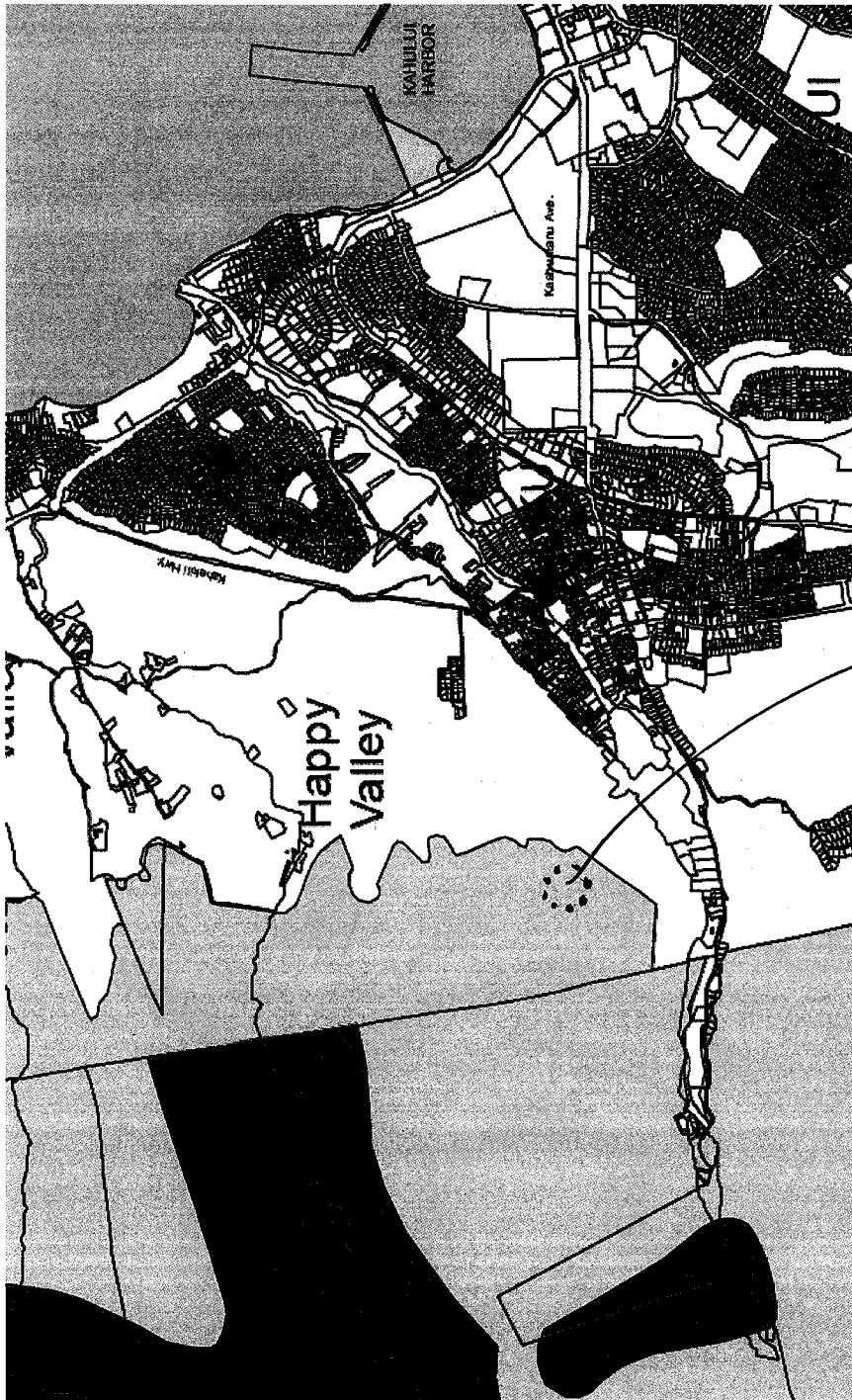
**EXHIBIT**





State Land Use District

EXHIBIT 3



This map is intended for visual representation of proposed subzone designations. It should not be used for boundary interpretations or any other use beyond the limits of this data. (Prepared on the State of Hawaii's GIS, NOVEMBER 2005)

EXHIBIT 4

TO	FROM
CO.	DATE
PHONE	692-8823
FAX	241-1196



PETER T. YOUNG  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

DAN DAVIDSON  
DEPUTY DIRECTOR - LAND

YVONNE Y. IZU  
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCE  
PLANNING AND DESIGN  
BUREAU OF CONSERVATION  
COMMISSION ON WATER RESOURCE MANAGEMENT  
CONSERVATION AND COASTAL LANDS  
CONSERVATION AND RESOURCE ENFORCEMENT  
ENGINEERING  
FORESTRY AND WILDLIFE  
HISTORIC WATERWAYS  
HAWAIIAN ISLAND RESERVE COMMISSION  
LAND  
STATE PARK



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES

HISTORIC PRESERVATION DIVISION  
KAKUHIHEWA BUILDING, ROOM 555  
801 KAMOKILA BOULEVARD  
KAPOLEI, HAWAII 96707

October 28, 2004

Mr. Glen Ueno  
Department of Public Works and Environmental Management  
Development Services Administration  
250 South High Street  
Wailuku, Hawaii 96793

LOG NO: 2004.3210  
DOC NO: 0410CD36

Dear Mr. Ueno,

SUBJECT: **REVISED:** Chapter 6E-42 Historic Preservation Review - Final Plat Review for the Proposed 'Iao Valley Large-Lot Subdivision (File No.: 3.2047) [County/DSA] Wailuku Ahupua'a, Wailuku District, Island of Maui  
TMK: (3) 3-3-002:por. of 001

These are our revised comments pertaining to the Final Plat Review for the Proposed 'Iao Valley Large-Lot Subdivision. Our previous comments (SHPD DOC NO.: 0410CD48/LOG NO.: 2004.1873) recommend that no action be taken on the subject permit application until an archaeological inventory survey has been conducted of the proposed subdivision to determine whether significant historic sites are present.

We understand the purpose of the subdivision is to provide access easements to two existing water tanks located on two separate portions of TMK: 3-3-002:por. of 001. (Water tank #2 is located on Lot A-1-A and water tank #2 is located on Lot 1A-1-B of this subdivision). On March 28, 2004, Erik Fredericksen, Xamanek Researches, conducted a field inspection of the two existing water tank sites. The third lot of the proposed subdivision (Lot A-1-C) was not included in this field inspection, nor have we received a report documenting the findings of the recommended inventory survey to date.

There were no historic properties identified in the vicinity of the existing water tanks during the field inspection. However, a segment of the Waihe'e Ditch (SIHP 50-50-04-5187) was noted to the west of the tank sites. In addition, two previously identified historic sites (SIHP 50-50-04-5185, a possible plantation era wall/platform; and SIHP-5186, a coral and shell surface scatter) were documented during the inventory survey of the Wailuku Country Estates, located on an adjacent property.

Based on the findings of the field inspection, we believe there were "no historic properties affected" during the proposed undertaking. However, we request the opportunity to review any permitted actions for the portion of land currently designated Lot A-1-3.

If you have any questions, please call Cathleen A. Dagher at 692-8023.

Aloha,

*Melanie Chinen*  
Melanie Chinen, Administrator  
State Historic Preservation Division

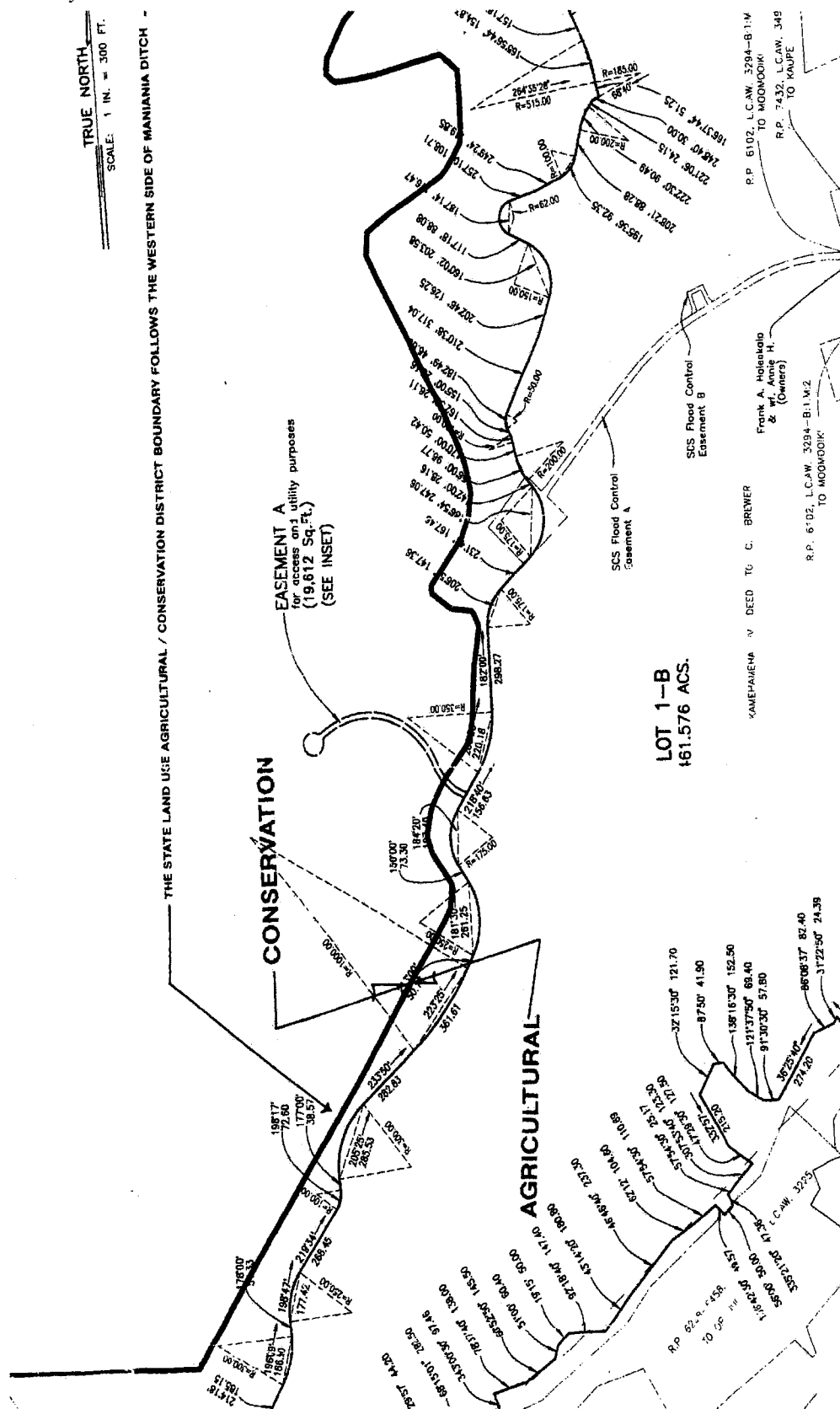
CD:jan

cc: Michael Foley, Director, Dept of Planning, 250 S. High Street, Wailuku, Hawaii 96793  
Cultural Resources Commission, Planning Dept, 250 S. High Street, Wailuku, HI 96793

NOV - 1 2004

EXHIBIT 5

TRUE NORTH  
SCALE: 1 IN. = 300 FT.



*Wailuku Country Estates Water Storage Tank & Subdivision*



Exhibit E-6

View (looking east) from Southeast corner of Water Tank Site (Proposed Lot A-1-A)

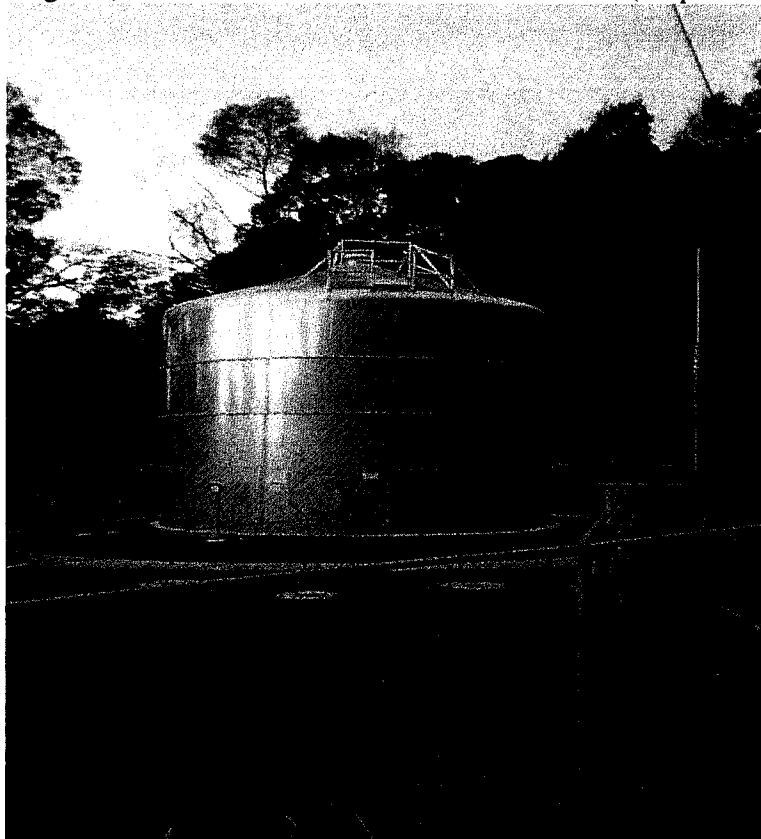


Exhibit E-7

View (looking south) of Water Storage Tank across Proposed Lot A-1-A



Exhibit F-3  
Aerial Photo of Construction of Wailuku Country Estate Roadways and Project Area on  
December 19, 2003

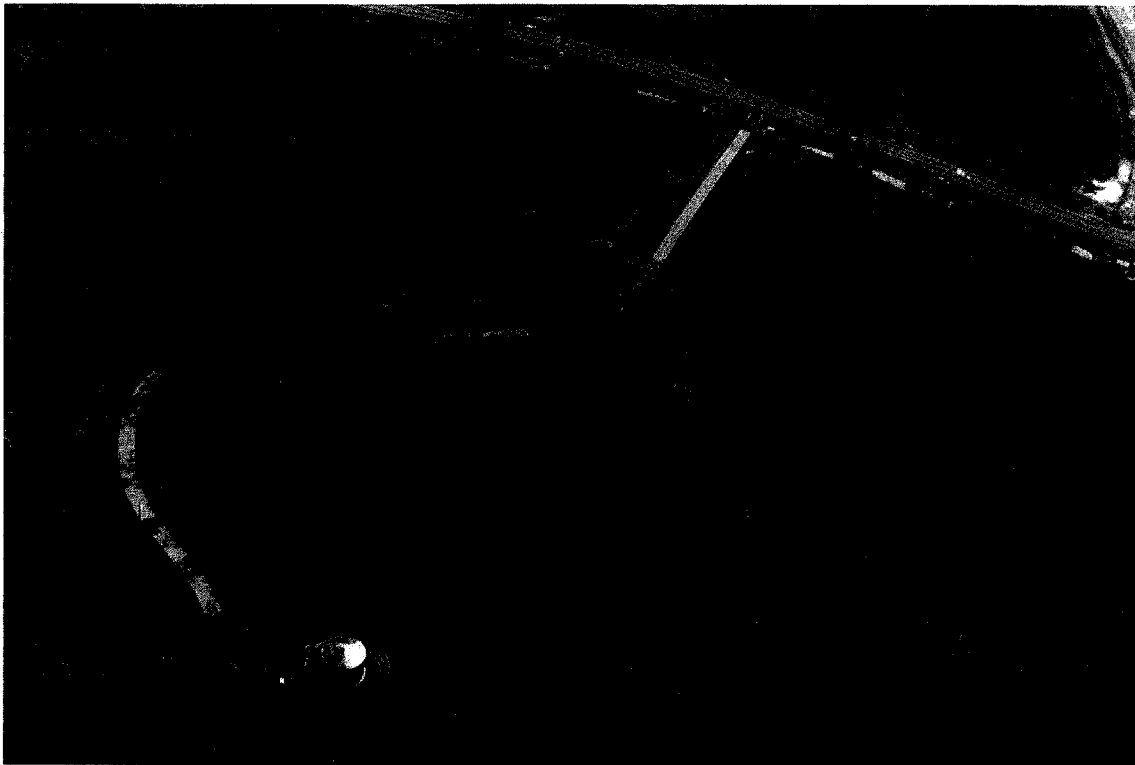
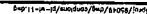


Exhibit F-4  
Aerial Photo of Completed Water Storage Tank and Access Road on January 20, 2004







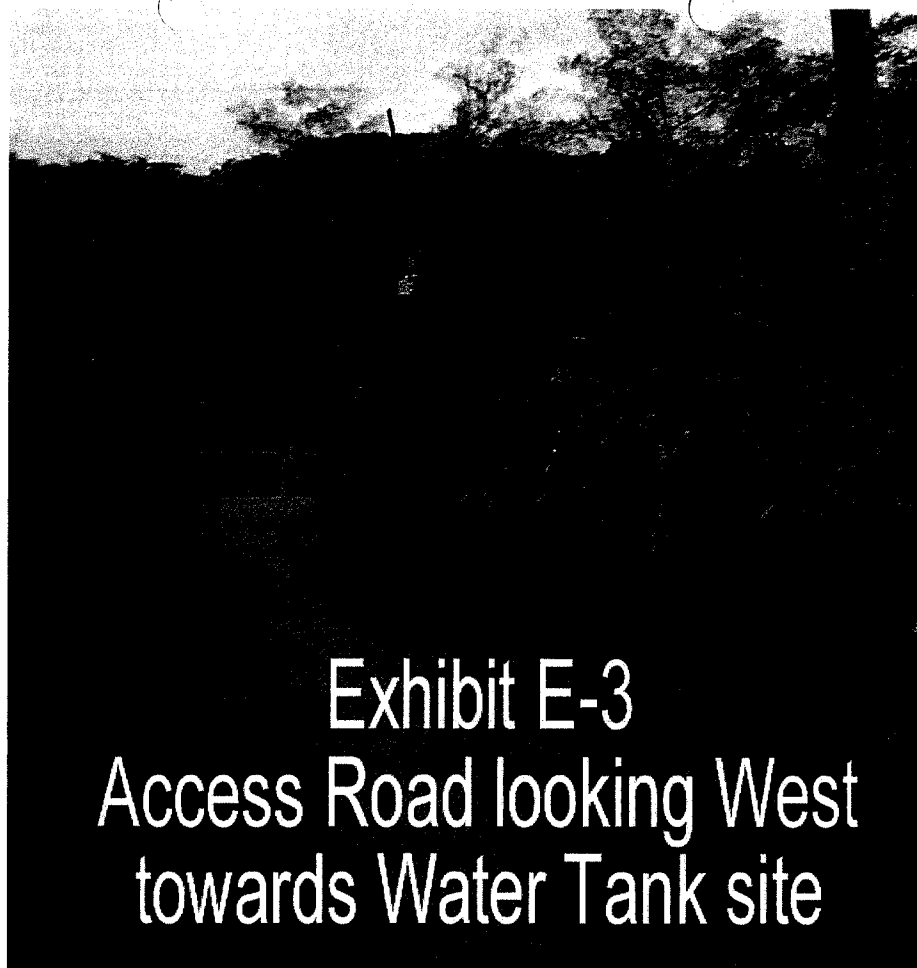


Exhibit E-3  
Access Road looking West  
towards Water Tank site

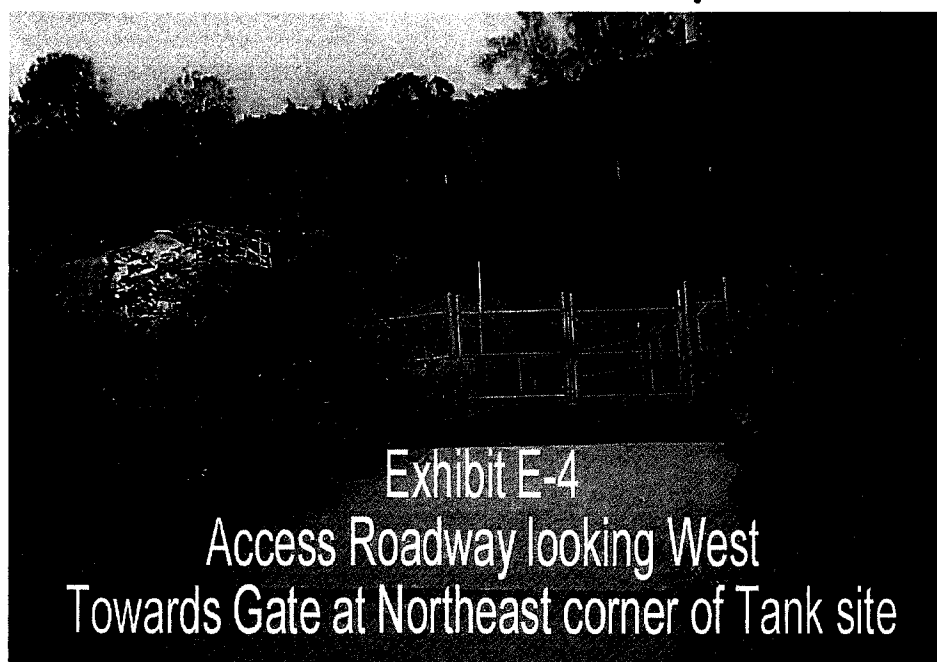


Exhibit E-4  
Access Roadway looking West  
Towards Gate at Northeast corner of Tank site

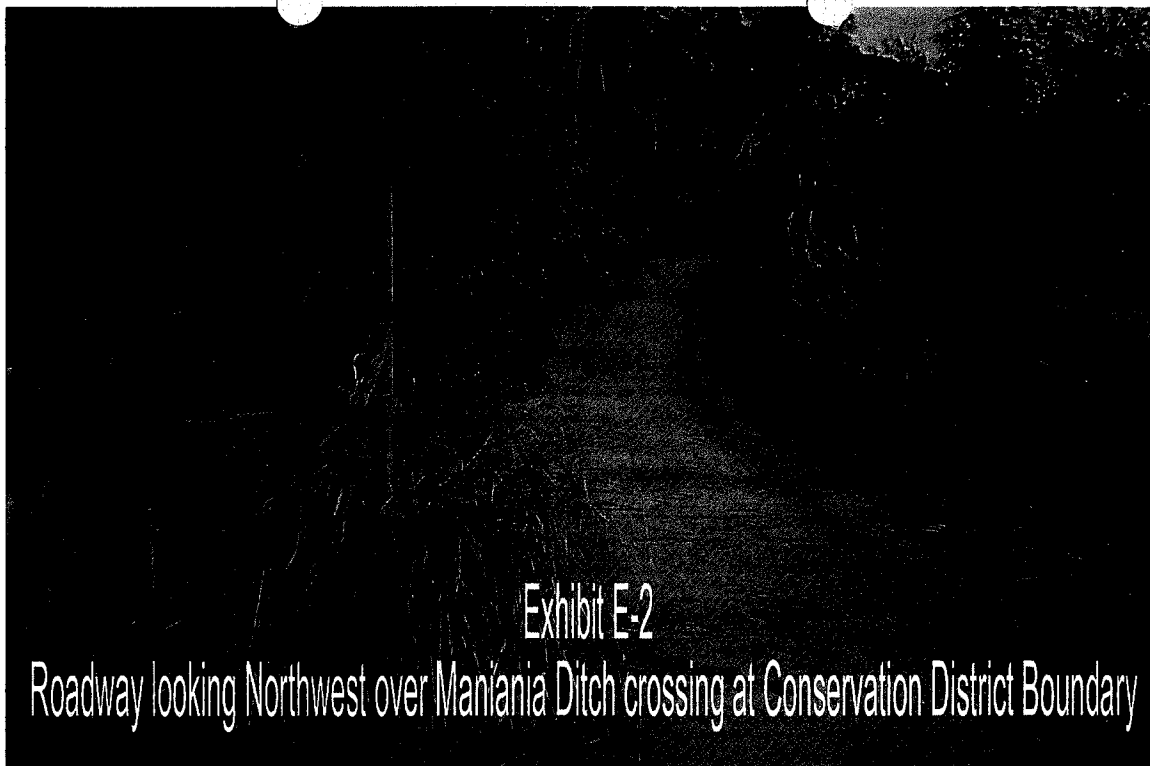
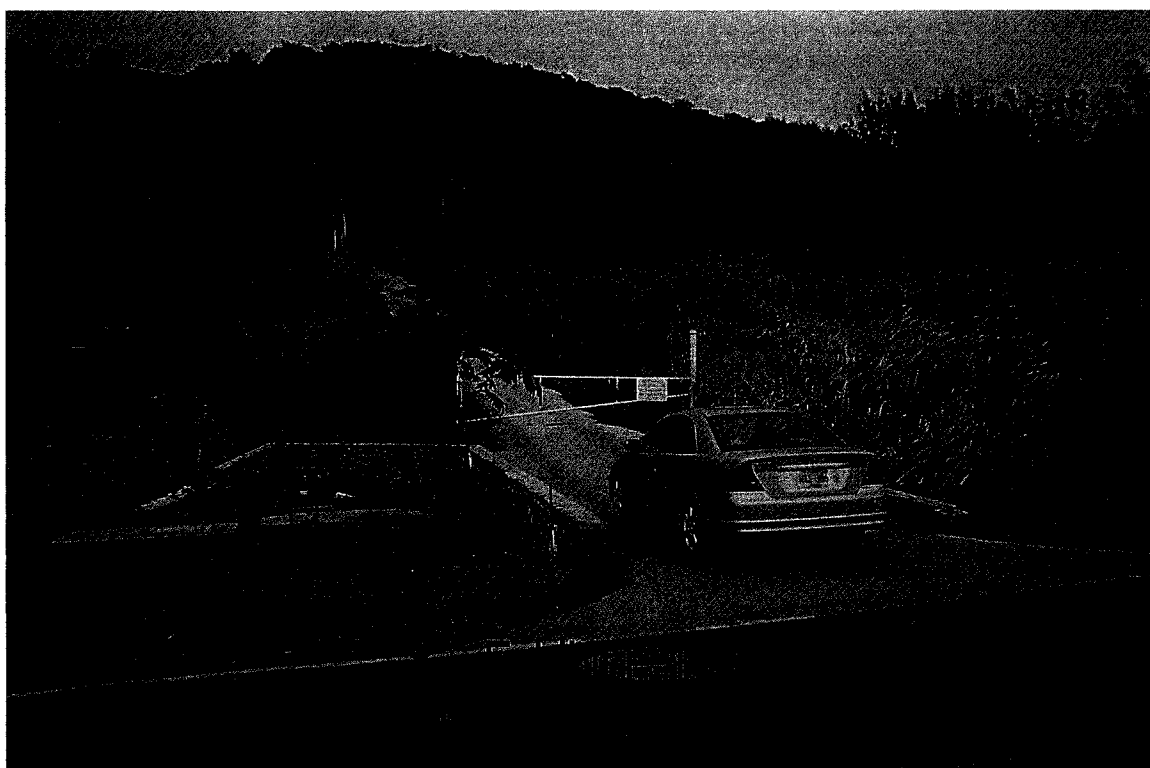


Exhibit E-2

Roadway looking Northwest over Maniana Ditch crossing at Conservation District Boundary



Roadway and Site Photographs

EXHIBIT 13

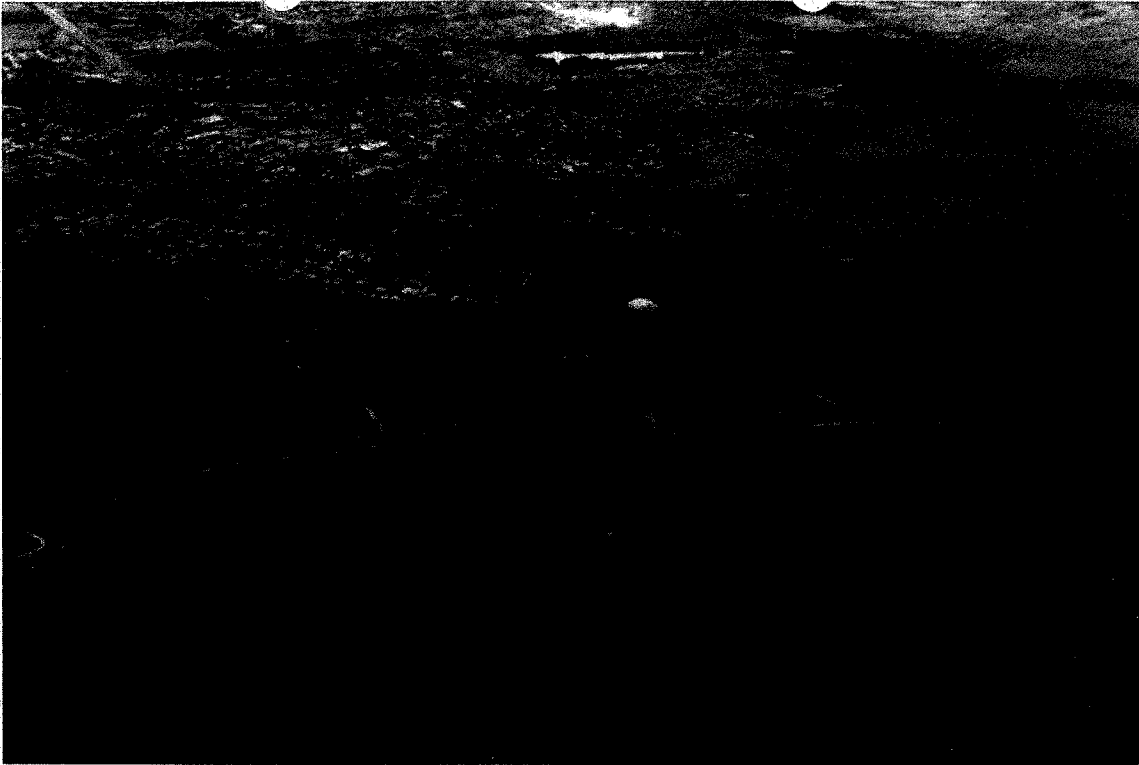
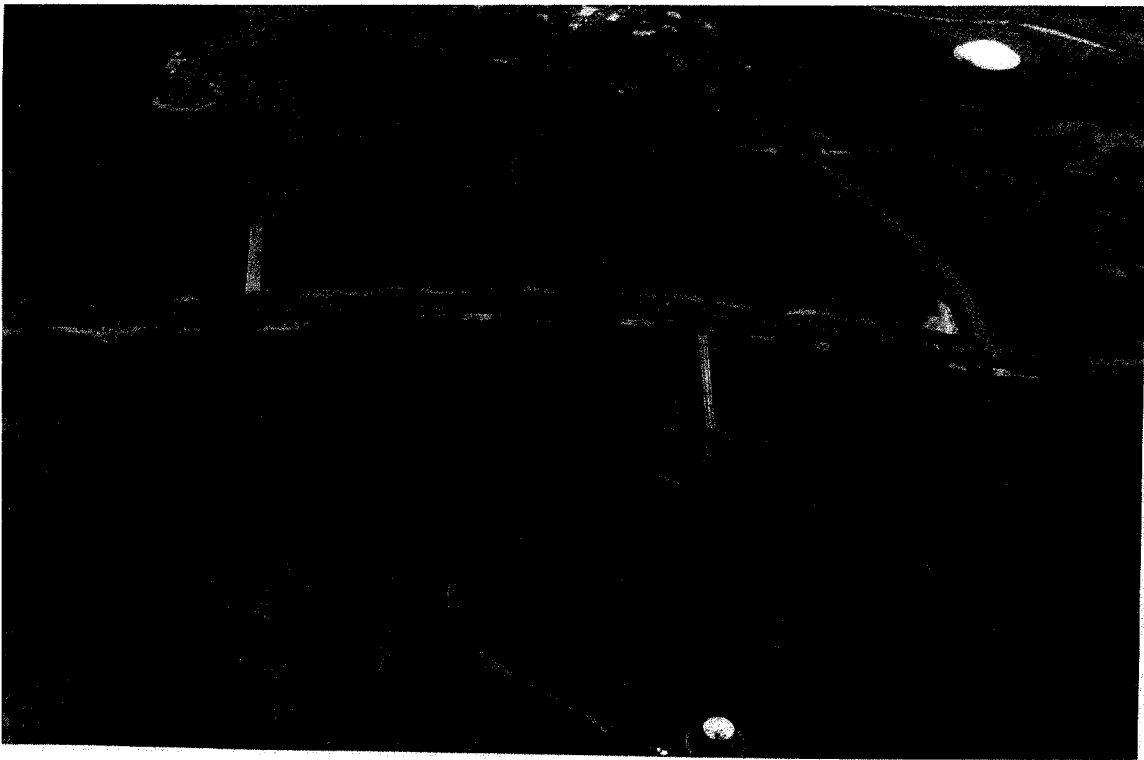


Exhibit F-1  
Aerial Photograph of Project Area Taken on October 20, 2003



Aerial Photograph of Access Road and Water Storage Tank Site  
Taken on November 20, 2003

EXHIBIT 14

*Wailuku Country Estates Water Storage Tank & Subdivision*



Exhibit E-4

View of Northeast corner of Water Tank Site (Proposed Lot A-1-A) from Easement 1



Exhibit E-5

View (looking south) from Northwest corner of Water Tank Site (Proposed Lot A-1-A)

subject area



330020010000

WAIEHU

WAHI HO'OMALU LIMITED PAR

**Assessed Values**

1 of 2

Property Class	• AGRICULTURAL
Land Value	\$2,706,800
Land Exemption	\$0
Net Taxable Land Value	\$71,100
Building Value	\$0
Building Exemption	\$0
Net Taxable Building Value	\$0
Total Taxable Value	\$71,100
Homeowner Class	

Last Updated: 10/23/2006

Printed on Wednesday, October 25, 2006, at 8:28:49 PM EST

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**EXHIBIT 17**



330020010000

WAIEHU

WAHI HO'OMALU LIMITED PAR

**Assessed Values**

Property Class	CONSERVATION
Land Value	\$500
Land Exemption	\$0
Net Taxable Land Value	\$500
Building Value	\$0
Building Exemption	\$0
Net Taxable Building Value	\$0
Total Taxable Value	\$500
Homeowner Class	

2 of 2

Last Updated: 10/23/2006

Printed on Wednesday, October 25, 2006, at 8:18:38 PM EST

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**EXHIBIT 17**

## COUNTY OF MAUI

**LAND USE & CODES ADMINISTRATION**  
 DEPARTMENT OF PUBLIC WORKS AND WASTE MANAGEMENT  
 250 SOUTH HIGH STREET - WAILUKU, HAWAII 96793  
 (808) 270-7250

PERMIT NUMBER

2003/373

DATE ISSUED

2/26/2003

## Application for Building Permit

FOR LAND USE &amp; CODES ADMINISTRATION USE ONLY

INITIAL

☐ I claim an exemption under HRS §444-2(7) and hereby certify that this structure is for my personal use and not for use or occupancy by the general public. I further certify that such building or structure will not be offered for sale or lease within one year after completion, and have read and understand the Disclosure Statement required by HRS §444-2(7).

☐ Falsely claiming an exemption is a violation of §444-2(7) and carries a fine of forty percent (40%) of the total contract price, or other amounts as stipulated in §444-23(c).

☐ I claim exemption from the provisions of HRS Chapter 464, requiring certification and stamping of plans by a registered architect or structural engineer as permitted under §464-13(b). I further certify that I will record this exemption with the Bureau of Conveyances as required by §464-13(c).

☐ Approval is granted subject to compliance with the use regulations set forth in HRS Chapter 205 and the Land Use Commission's Rules & Regulations. The owner will provide notice of these use regulations to future owners, heirs and assigns. I acknowledge that I have received from the County of Maui a copy of HRS §205-4.5.

APPROVALS

AGENCY

SIGNATURE

DATE

☒ WATER DEPT.☒ HEALTH DEPT.☒ FIRE PREV BUREAU☒ LUCA ENGR☒ LUCA BLDG☒ PLANNING DEPT.☐ WWRD

ACCEPT. VAL \$

249,820.00

PERMIT FEE \$

1164.50

REMARKS:

Owner utility facility

SIGNATURE OF OWNER

DATE

I hereby certify that I am a bona fide contractor licensed in the State of Hawaii.

X

SIGNATURE OF CONTRACTOR

DATE

APPLICATION NO.

2003/373

DATE RECEIVED

01/22/03

T

M

K

(S)

ZONE

3

SEC

3

PLAT

002

PAR

001

LOT

PROJECT NAME

Wailuku Country Estates Water Tank # 2

CONSTRUCTION TYPE

V.N

OCCUPANCY GROUP

D-2

OWNERSHIP

1

ZONE

A-9

FLOOD ZONE

C

## APPLICANT: PLEASE FILL IN AREA BELOW (TYPED)

PROJECT ADDRESS (HOUSE NO. AND STREET)

Kahakui Hwy

Off Road H, Wailuku Country Estates

PROJECT ADDRESS (TOWN AND DISTRICT)

Wailuku, Hawaii

LEGAL OWNER (FULL NAME)

Puluvot LLC (GM LLC)

MAILING ADDRESS (INCLUDE ZIP CODE)

P. O. Box 1237, Kamuela, HI 96743

LESSEE/TENANT (1)

MAILING ADDRESS (INCLUDE ZIP CODE)

LESSEE/TENANT (2)

MAILING ADDRESS (INCLUDE ZIP CODE)

LESSEE/TENANT (3)

MAILING ADDRESS (INCLUDE ZIP CODE)

PLAN MAKER

Richard Field

LICENSE NO.

PE 8423

MAILING ADDRESS (INCLUDE ZIP CODE)

BUILDER

Goodfellow Brothers, Inc.

LICENSE NO.

A 7046

MAILING ADDRESS (INCLUDE ZIP CODE)

P. O. Box 220, Kihei, HI 96753

TELEPHONE NO.

879-8868

APPLICANT NAME

Gary Green

MAILING ADDRESS (INCLUDE ZIP CODE)

P. O. Box 220

Kihei, HI 96753

SIGNATURE OF APPLICANT

DATE

NATURE OF WORK (CHECK ALL THAT APPLY)

☐ NEW BUILDING☐ RETAINING WALL☐ ADDITION☒ MISC. STRUCTURE☐ SITE WORK☐ FENCE☐ SHELL ONLY☐ ALTERATION☐ REPAIR☐ SEA WALL☐ FOUNDATION ONLY☐ RELOCATION☐ RECONSTRUCTION☐ DEMOLITION☐ SWIMMING POOL

NOW OCCUPIED AS

N/A

TO BE OCCUPIED AS

Water Tank

DIMENSIONS

WALLS

PARTITIONS

FOUNDATION

FLOORS

ROOF

CEILING

BASEMENT FLOOR

NO. OF UNITS

NO. OF STORIES

ROOF OVERHANG

ESTIMATED VALUE OF WORK

#249,820

DISTANCE TO NEAREST INTERIOR LOT BOUNDARY (FEET)

NEAREST BLDG.

RIGHT:

LEFT:

REAR:

FRONT:

REMARKS:

100,000 Water tank

440A  
now  
Development  
Service  
(DSA)

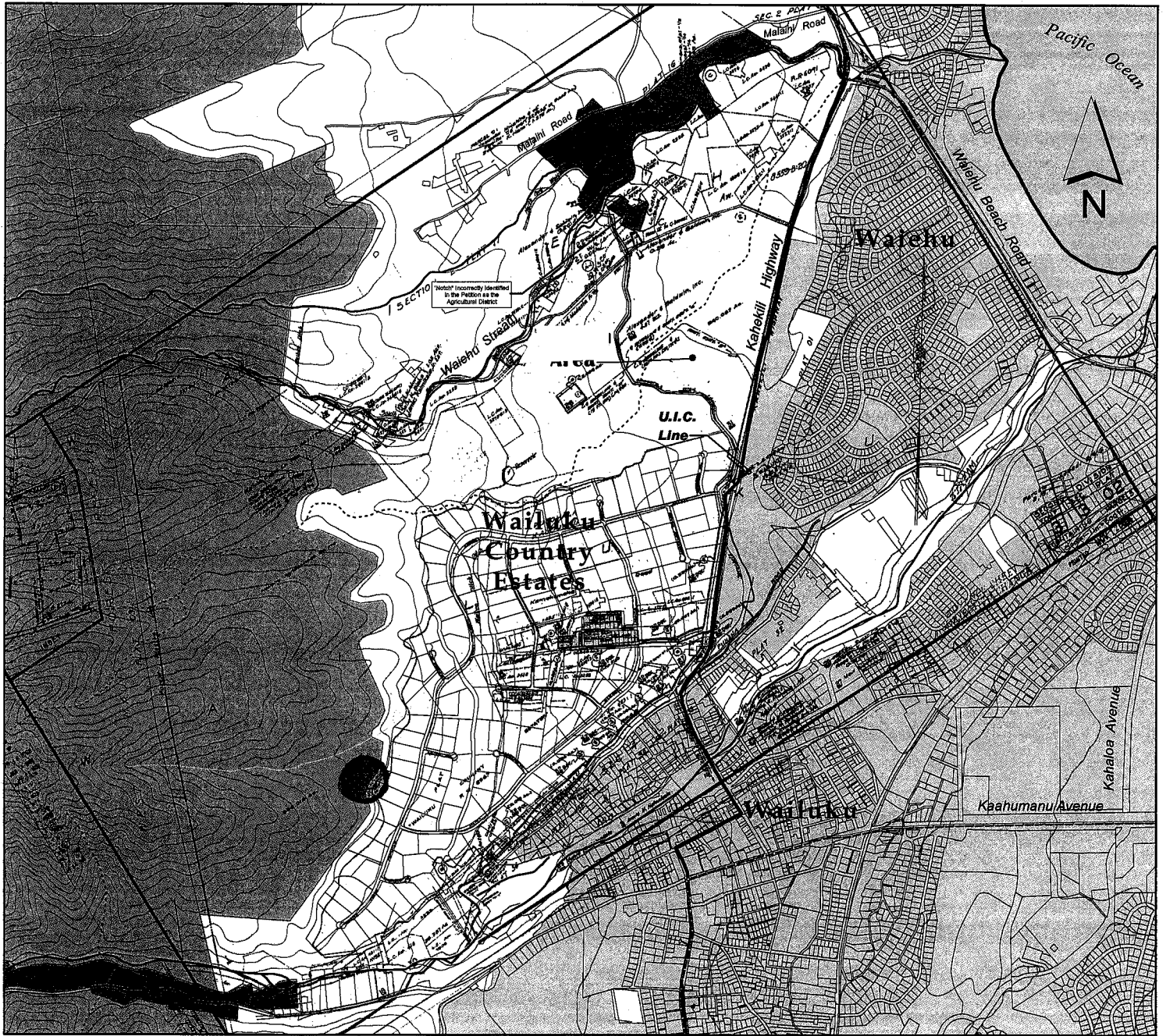


EXHIBIT 19